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AUTHORITY: 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

SOURCE: T.D. 7020, 34 FR 20337, Dec. 30, 1969, unless otherwise noted.

EDITORIAL NOTE: For a document affecting part 5, see the editorial note appearing at the beginning of this chapter.

Subpart A--Scope

§5.1 General.

The regulations in this part relate to the labeling and advertising of distilled spirits. This part applies to the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, but does not apply to distilled spirits for export.

§5.2 Related regulations.

Regulations relating to this part are listed below:

27 CFR Part 1--Basic Permit Requirements under the Federal Alcohol Administration Act.

27 CFR Part 2--Nonindustrial Use of Distilled Spirits and Wine.

27 CFR Part 3--Bulk Sales and Bottling of Distilled Spirits.

27 CFR Part 4--Labeling and Advertising of Wine.

27 CFR Part 7--Labeling and Advertising of Malt Beverages.

27 CFR Part 16--Alcoholic Beverage Health Warning Statement.

27 CFR Part 19--Distilled Spirits Plants.

27 CFR Part 200--Rules of Practice in Permit Proceedings.

27 CFR Part 250--Liquors and Articles from Puerto Rico and the Virgin Islands.

27 CFR Part 251--Importation of Distilled Spirits, Wines and Beer.

27 CFR Part 252--Exportation of Liquors.

(26 U.S.C. 7805 (68A Stat. 917, as amended); 27 U.S.C. 205 49 Stat. 981, as amended)

[T.D. 720, 34 FR 20637, Dec. 30, 1969, as amended by T.D. ATF-62, 44 FR 71620, Dec. 11, 1979; T.D. ATF-114, 47 FR 43947, Oct. 5, 1982; 55 FR 5421, Feb. 14, 1990]

§5.3 Forms prescribed.

(a) The appropriate ATF officer is authorized to prescribe all forms required by this part. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this part. The form will be filed in accordance with the instructions for the form.

(b) Forms may be requested from the ATF Distribution Center, PO Box 5950, Springfield, Virginia 22153-5190, or by accessing the ATF web site (<http://www.atf.treas.gov/>).

[T.D. ATF-92, 46 FR 46912, Sept. 23, 1981, as amended by T.D. ATF-249, 52 FR 5956, Feb. 27, 1987; T.D. 372, 61 FR 20723, May 8, 1996; T.D. ATF-425, 65 FR 11891, Mar. 7, 2000]

§5.4 Delegations of the Director.

Most of the regulatory authorities of the Director contained in this part 5 are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.2A, Delegation Order--Delegation of the Director's Authorities in 27 CFR parts 4, 5 and 7, Labeling and Advertising of Wine, Distilled Spirits and Malt Beverages. ATF delegation orders, such as ATF Order 1130.2A, are available to any interested person by mailing a request to the ATF Distribution Center, PO Box 5950, Springfield, Virginia 22150-5190, or by accessing the ATF web site (<http://www.atf.treas.gov/>).

[T.D. ATF-425, 65 FR 11891, Mar. 7, 2000]

Subpart B--Definitions

§5.11 Meaning of terms.

When used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meaning ascribed in this section. Any other term defined in the Federal Alcohol

Administration Act and used in this part shall have the same meaning assigned to it by such Act.

Act. The Federal Alcohol Administration Act.

Advertisement. See §5.62 for meaning of term as used in subpart H of this part.

Age. The period during which, after distillation and before bottling, distilled spirits have been stored in oak containers. "Age" for bourbon whisky, rye whisky, wheat whisky, malt whisky, or rye malt whisky, and straight whiskies other than straight corn whisky, means the period the whisky has been stored in charred new oak containers.

Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.2A, Delegation Order--Delegation of the Director's Authorities in 27 CFR part 4, 5 and 7, Labeling and Advertising of Wine, Distilled Spirits and Malt Beverages.

Bottle. Any container, irrespective of the material from which made, used for the sale of distilled spirits at retail.

Brand label. The principal display panel that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale, and any other label appearing on the same side of the bottle as the principal display panel. The principal display panel appearing on a cylindrical surface is that 40 percent of the circumference which is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC.

Distilled spirits. Ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whisky, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for nonindustrial use. The term "distilled spirits" shall not include mixtures containing wine, bottled at 48 degrees of proof or less, if the mixture contains more than 50 percent wine on a proof gallon basis.

Gallon. U.S. gallon of 231 cubic inches of alcoholic beverage at 60 °F.

In bulk. In containers having a capacity in excess of 1 wine gallon (3.785 liters).

Interstate or foreign commerce. Commerce between any State and any place outside thereof, or commerce within any Territory or the District of Columbia, or between points within the same State but through any place outside thereof.

Liter or litre. A metric unit of capacity equal to 1,000 cubic centimeters of distilled spirits at 15.56 °C (60 °F.), and equivalent to 33.814 U.S. fluid ounces. A liter is subdivided into 1,000 milliliters. milliliter or milliliters may be abbreviated as "ml".

Permittee. Any person holding a basic permit under the Federal Alcohol Administration Act.

Person. Any individual, partnership, joint stock company, business trust, association,

corporation, or other form of business enterprise, including a receiver, trustee, or liquidating agent and including an officer or employee of any agency of a State or political subdivision thereof; and the term "trade buyer" means any person who is a wholesaler or retailer.

Produced at. As used in §§5.22 and 5.52 in conjunction with specific degrees of proof to describe the standards of identity, means the composite proof of the spirits after completion of distillation and before reduction in proof.

Proof gallon. A gallon of liquid at 60 °F. which contains 50 percent by volume of ethyl alcohol having a specific gravity of 0.7939 at 60 °F. referred to water at 60 °F. as unity, or the alcoholic equivalent thereof.

Season. The period from January 1 through June 30, is the spring season and the period from July 1 through December 31 is the fall season.

United States. The several States and Territories and the District of Columbia; the term "State" includes a Territory and the District of Columbia; and the term "Territory" means the Commonwealth of Puerto Rico.

(26 U.S.C. 7805 (68 Stat. 917, as amended); 27 U.S.C. 205 (49 Stat. 981, as amended))

[T.D. ATF-48, 43 FR 13533, Mar. 31, 1978; 44 FR 55839, Sept. 28, 1979, as amended by T.D. ATF-62, 44 FR 71620, Dec. 11, 1979; T.D. ATF-66, 45 FR 40547, June 13, 1980; T.D. ATF-94, 46 FR 55096, Nov. 6, 1981; T.D. ATF-198, 50 FR 8463, Mar. 1, 1985; T.D. ATF-230, 51 FR 21748, June 16, 1986; T.D. ATF-425, 65 FR 11891, Mar. 7, 2000]

Subpart C--Standards of Identity for Distilled Spirits

§5.21 Application of standards.

The standards of identity for the several classes and types of distilled spirits set forth in this part shall be applicable only to distilled spirits for beverage or other nonindustrial purposes.

§5.22 The standards of identity.

Standards of identity for the several classes and types of distilled spirits set forth in this section shall be as follows (see also §5.35, class and type):

(a) *Class 1; neutral spirits or alcohol.*

"Neutral spirits" or "alcohol" are distilled spirits produced from any material at or above 190° proof, and, if bottled, bottled at not less than 80° proof.

(1) "Vodka" is neutral spirits so distilled, or so treated after distillation with charcoal or other materials, as to be without distinctive character, aroma, taste, or color.

(2) "Grain spirits" are neutral spirits distilled from a fermented mash of grain and stored in oak containers.

(b) *Class 2; whisky.*

"Whisky" is an alcoholic distillate from a fermented mash of grain produced at less

than 190° proof in such manner that the distillate possesses the taste, aroma, and characteristics generally attributed to whisky, stored in oak containers (except that corn whisky need not be so stored), and bottled at not less than 80° proof, and also includes mixtures of such distillates for which no specific standards of identity are prescribed.

(1)(i) "Bourbon whisky", "rye whisky", "wheat whisky", "malt whisky", or "rye malt whisky" is whisky produced at not exceeding 160° proof from a fermented mash of not less than 51 percent corn, rye, wheat, malted barley, or malted rye grain, respectively, and stored at not more than 125° proof in charred new oak containers; and also includes mixtures of such whiskies of the same type.

(ii) "Corn whisky" is whisky produced at not exceeding 160° proof from a fermented mash of not less than 80 percent corn grain, and if stored in oak containers stored at not more than 125° proof in used or uncharred new oak containers and not subjected in any manner to treatment with charred wood; and also includes mixtures of such whisky.

(iii) Whiskies conforming to the standards prescribed in paragraphs (b)(1)(i) and (ii) of this section, which have been stored in the type of oak containers prescribed, for a period of 2 years or more shall be further designated as "straight"; for example, "straight bourbon whisky", "straight corn whisky", and whisky conforming to the standards prescribed in paragraph (b)(1)(i) of this section, except that it was produced from a fermented mash of less than 51 percent of any one type of grain, and stored for a period of 2 years or more in charred new oak containers shall be designated merely as "straight whisky". No other whiskies may be designated "straight". "Straight whisky" includes mixtures of straight whiskies of the same type produced in the same State.

(2) "Whisky distilled from bourbon (rye, wheat, malt, or rye malt) mash" is whisky produced in the United States at not exceeding 160° proof from a fermented mash of not less than 51 percent corn, rye, wheat, malted barley, or malted rye grain, respectively, and stored in used oak containers; and also includes mixtures of such whiskies of the same type. Whisky conforming to the standard of identity for corn whisky must be designated corn whisky.

(3) "Light whisky" is whisky produced in the United States at more than 160° proof, on or after January 26, 1968, and stored in used or uncharred new oak containers; and also includes mixtures of such whiskies. If "light whisky" is mixed with less than 20 percent of straight whisky on a proof gallon basis, the mixture shall be designated "blended light whisky" (light whisky--a blend).

(4) "Blended whisky" (whisky--a blend) is a mixture which contains straight whisky or a blend of straight whiskies at not less than 20 percent on a proof gallon basis, excluding alcohol derived from added harmless coloring, flavoring or blending materials, and, separately, or in combination, whisky or neutral spirits. A blended whisky containing not less than 51 percent on a proof gallon basis of one of the types of straight whisky shall be further designated by that specific type of straight whisky; for example, "blended rye whisky" (rye whisky--a blend).

(5) (i) "A blend of straight whiskies" (blended straight whiskies) is a mixture of

straight whiskies which does not conform to the standard of identify for "straight whisky." Products so designated may contain harmless coloring, flavoring, or blending materials as set forth in 27 CFR 5.23(a).

(ii) "A blend of straight whiskies" (blended straight whiskies) consisting entirely of one of the types of straight whisky, and not conforming to the standard for straight whisky, shall be further designated by that specific type of straight whisky; for example, "a blend of straight rye whiskies" (blended straight rye whiskies). "A blend of straight whiskies" consisting entirely of one of the types of straight whisky shall include straight whisky of the same type which was produced in the same State or by the same proprietor within the same State, provided that such whisky contains harmless coloring, flavoring, or blending materials as stated in 27 CFR 5.23(a).

(iii) The harmless coloring, flavoring, or blending materials allowed under this section shall not include neutral spirits or alcohol in their original state. Neutral spirits or alcohol may only appear in a "blend of straight whiskies" or in a "blend of straight whiskies consisting entirely of one of the types of straight whisky" as a vehicle for recognized flavoring or blending material.

(6) "Spirit whisky" is a mixture of neutral spirits and not less than 5 percent on a proof gallon basis of whisky, or straight whisky, or straight whisky and whisky, if the straight whisky component is less than 20 percent on a proof gallon basis.

(7) "Scotch whisky" is whisky which is a distinctive product of Scotland, manufactured in Scotland in compliance with the laws of the United Kingdom regulating the manufacture of Scotch whisky for consumption in the United Kingdom: *Provided*, That if such product is a mixture of whiskies, such mixture is "blended Scotch whisky" (Scotch whisky--a blend).

(8) "Irish whisky" is whisky which is a distinctive product of Ireland, manufactured either in the Republic of Ireland or in Northern Ireland, in compliance with their laws regulating the manufacture of Irish whisky for home consumption: *Provided*, That if such product is a mixture of whiskies, such mixture is "blended Irish whisky" (Irish whisky--a blend).

(9) "Canadian whisky" is whisky which is a distinctive product of Canada, manufactured in Canada in compliance with the laws of Canada regulating the manufacture of Canadian whisky for consumption in Canada: *Provided*, That if such product is a mixture of whiskies, such mixture is "blended Canadian whisky" (Canadian whisky--a blend).

(c) *Class 3; gin.*

"Gin" is a product obtained by original distillation from mash, or by redistillation of distilled spirits, or by mixing neutral spirits, with or over juniper berries and other aromatics, or with or over extracts derived from infusions, percolations, or maceration of such materials, and includes mixtures of gin and neutral spirits. It shall derive its main characteristic flavor from juniper berries and be bottled at not less than 80° proof. Gin produced exclusively by original distillation or by redistillation may be further designated as "distilled". "Dry gin" (London dry gin), "Geneva gin" (Hollands gin), and "Old Tom gin" (Tom gin) are types of gin known under such designations.

(d) *Class 4; brandy.*

"Brandy" is an alcoholic distillate from the fermented juice, mash, or wine of fruit, or from the residue thereof, produced at less than 190° proof in such manner that the distillate possesses the taste, aroma, and characteristics generally attributed to the product, and bottled at not less than 80° proof. Brandy, or mixtures thereof, not conforming to any of the standards in paragraphs (d)(1) through (8) of this section shall be designated as "brandy", and such designation shall be immediately followed by a truthful and adequate statement of composition.

(1) "Fruit brandy" is brandy distilled solely from the fermented juice or mash of whole, sound, ripe fruit, or from standard grape, citrus, or other fruit wine, with or without the addition of not more than 20 percent by weight of the pomace of such juice or wine, or 30 percent by volume of the lees of such wine, or both (calculated prior to the addition of water to facilitate fermentation or distillation). Fruit brandy shall include mixtures of such brandy with not more than 30 percent (calculated on a proof gallon basis) of lees brandy. Fruit brandy, derived from grapes, shall be designated as "grape brandy" or "brandy", except that in the case of brandy (other than neutral brandy, pomace brandy, marc brandy or grappa brandy) distilled from the fermented juice, mash, or wine of grapes, or the residue thereof, which has been stored in oak containers for less than 2 years, the statement of class and type shall be immediately preceded, in the same size and kind of type, by the word "immature". Fruit brandy, other than grape brandy, derived from one variety of fruit, shall be designated by the word "brandy" qualified by the name of such fruit (for example, "peach brandy"), except that "apple brandy" may be designated "applejack". Fruit brandy derived from more than one variety of fruit shall be designated as "fruit brandy" qualified by a truthful and adequate statement of composition.

(2) "Cognac", or "Cognac (grape) brandy", is grape brandy distilled in the Cognac region of France, which is entitled to be so designated by the laws and regulations of the French Government.

(3) "Dried fruit brandy" is brandy that conforms to the standard for fruit brandy except that it has been derived from sound, dried fruit, or from the standard wine of such fruit. Brandy derived from raisins, or from raisin wine, shall be designated as "raisin brandy". Other brandies shall be designated in the same manner as fruit brandy from the corresponding variety or varieties of fruit except that the name of the fruit shall be qualified by the word "dried".

(4) "Lees brandy" is brandy distilled from the lees of standard grape, citrus, or other fruit wine, and shall be designated as "lees brandy", qualified by the name of the fruit from which such lees are derived.

(5) "Pomace brandy", or "marc brandy", is brandy distilled from the skin and pulp of sound, ripe grapes, citrus or other fruit, after the withdrawal of the juice or wine therefrom, and shall be designated as "pomace brandy", or "marc brandy", qualified by the name of the fruit from which derived. Grape pomace brandy may be designated as "grappa" or "grappa brandy".

(6) "Residue brandy" is brandy distilled wholly or in part from the fermented residue of fruit or wine, and shall be designated as "residue brandy" qualified by the name of the fruit from which derived. Brandy distilled wholly or in part from

residue materials which conforms to any of the standards set forth in paragraphs (d)(1), (3), (4), and (5) of this section may, regardless of such fact, be designated "residue brandy", but the use of such designation shall be conclusive, precluding any later change of designation.

(7) "Neutral brandy" is brandy produced at more than 170° proof and shall be designated in accordance with the standards in this paragraph, except that the designation shall be qualified by the word "neutral"; for example, "neutral citrus residue brandy".

(8) "Substandard brandy" shall bear as a part of its designation the word "substandard", and shall include:

(i) Any brandy distilled from fermented juice, mash, or wine having a volatile acidity, calculated as acetic acid and exclusive of sulfur dioxide, in excess of 0.20 gram per 100 cubic centimeters (20 °C.); measurements of volatile acidity shall be calculated exclusive of water added to facilitate distillation.

(ii) Any brandy which has been distilled from unsound, moldy, diseased, or decomposed juice, mash, wine, lees, pomace, or residue, or which shows in the finished product any taste, aroma, or characteristic associated with products distilled from such material.

(e) *Class 5; blended applejack.*

"Blended applejack" (applejack--a blend) is a mixture which contains at least 20 percent of apple brandy (applejack) on a proof gallon basis, stored in oak containers for not less than 2 years, and not more than 80 percent of neutral spirits on a proof gallon basis if such mixture at the time of bottling is not less than 80° proof.

(f) *Class 6; rum.*

"Rum" is an alcoholic distillate from the fermented juice of sugar cane, sugar cane syrup, sugar cane molasses, or other sugar cane by-products, produced at less than 190° proof in such manner that the distillate possesses the taste, aroma and characteristics generally attributed to rum, and bottled at not less than 80° proof; and also includes mixtures solely of such distillates.

(g) *Class 7; Tequila.*

"Tequila" is an alcoholic distillate from a fermented mash derived principally from the Agave Tequilana Weber ("blue" variety), with or without additional fermentable substances, distilled in such a manner that the distillate possesses the taste, aroma, and characteristics generally attributed to Tequila and bottled at not less than 80° proof, and also includes mixtures solely of such distillates. Tequila is a distinctive product of Mexico, manufactured in Mexico in compliance with the laws of Mexico regulating the manufacture of Tequila for consumption in that country.

(h) *Class 8; cordials and liqueurs.*

Cordials and liqueurs are products obtained by mixing or redistilling distilled spirits with or over fruits, flowers, plants, or pure juices therefrom, or other natural flavoring materials, or with extracts derived from infusions, percolation, or maceration of such materials, and containing sugar, dextrose, or levulose, or a combination thereof, in

an amount not less than 2½ percent by weight of the finished product.

(1) "Sloe gin" is a cordial or liqueur with the main characteristic flavor derived from sloe berries.

(2) "Rye liqueur", "bourbon liqueur" (rye, bourbon cordial) are liqueurs, bottled at not less than 60° proof, in which not less than 51 percent, on a proof gallon basis, of the distilled spirits used are, respectively, rye or bourbon whisky, straight rye or straight bourbon whisky, or whisky distilled from a rye or bourbon mash, and which possess a predominant characteristic rye or bourbon flavor derived from such whisky. Wine, if used, must be within the 2½ percent limitation provided in §5.23 for coloring, flavoring, and blending materials.

(3) "Rock and rye", "rock and bourbon", "rock and brandy", "rock and rum" are liqueurs, bottled at not less than 48° proof, in which, in the case of rock and rye and rock and bourbon, not less than 51 percent, on a proof gallon basis, of the distilled spirits used are, respectively, rye or bourbon whisky, straight rye or straight bourbon whisky, or whisky distilled from a rye or bourbon mash, and, in the case of rock and brandy and rock and rum, the distilled spirits used are all grape brandy or rum, respectively; containing rock candy or sugar syrup, with or without the addition of fruit, fruit juices, or other natural flavoring materials, and possessing, respectively, a predominant characteristic rye, bourbon, brandy, or rum flavor derived from the distilled spirits used. Wine, if used, must be within the 2½ percent limitation provided in §5.23 for harmless coloring, flavoring, and blending materials.

(4) "Rum liqueur," "gin liqueur," "brandy liqueur," are liqueurs, bottled at not less than 60 proof, in which the distilled spirits used are entirely rum, gin, or brandy, respectively, and which possess, respectively, a predominant characteristic rum, gin, or brandy flavor derived from the distilled spirits used. In the case of brandy liqueur, the type of brandy must be stated in accordance with §5.22(d), except that liqueurs made entirely with grape brandy may be designated simply as "brandy liqueur." Wine, if used, must be within the 2½ percent limitation provided for in §5.23 for harmless coloring, flavoring, and blending materials.

(5) The designation of a cordial or liqueur may include the word "dry" if the sugar, dextrose, or levulose, or a combination thereof, are less than 10 percent by weight of the finished product.

(6) Cordials and liqueurs shall not be designated as "distilled" or "compound".

(i) *Class 9; flavored brandy, flavored gin, flavored rum, flavored vodka, and flavored whisky.*

"Flavored brandy, "flavored gin," "flavored rum," "flavored vodka," and "flavored whisky," are brandy, gin, rum vodka, and whisky, respectively, to which have been added natural flavoring materials, with or without the addition of sugar, and bottled at not less than 60° proof. The name of the predominant flavor shall appear as a part of the designation. If the finished product contains more than 2½ percent by volume of wine, the kinds and percentages by volume of wine must be stated as a part of the designation, except that a flavored brandy may contain an additional 12½ percent by volume of wine, without label disclosure, if the additional wine is derived from the particular fruit corresponding to the labeled flavor of the product.

(j) *Class 10; imitations.*

Imitations shall bear, as a part of the designation thereof, the word "imitation" and shall include the following:

- (1) Any class or type of distilled spirits to which has been added coloring or flavoring material of such nature as to cause the resultant product to simulate any other class or type of distilled spirits;
- (2) Any class or type of distilled spirits (other than distilled spirits required under §5.35 to bear a distinctive or fanciful name and a truthful and adequate statement of composition) to which has been added flavors considered to be artificial or imitation. In determining whether a flavor is artificial or imitation, recognition will be given to what is considered to be "good commercial practice" in the flavor manufacturing industry;
- (3) Any class or type of distilled spirits (except cordials, liqueurs and specialties marketed under labels which do not indicate or imply, that a particular class or type of distilled spirits was used in the manufacture thereof) to which has been added any whisky essence, brandy essence, rum essence, or similar essence or extract which simulates or enhances, or is used by the trade or in the particular product to simulate or enhance, the characteristics of any class or type of distilled spirits;
- (4) Any type of whisky to which beading oil has been added;
- (5) Any rum to which neutral spirits or distilled spirits other than rum have been added;
- (6) Any brandy made from distilling material to which has been added any amount of sugar other than the kind and amount of sugar expressly authorized in the production of standard wine; and
- (7) Any brandy to which neutral spirits or distilled spirits other than brandy have been added, except that this provision shall not apply to any product conforming to the standard of identity for blended applejack.

(k) *Class 11; geographical designations.*

- (1) Geographical names for distinctive types of distilled spirits (other than names found by the appropriate ATF officer under paragraph (k)(2) of this section to have become generic) shall not be applied to distilled spirits produced in any other place than the particular region indicated by the name, unless (i) in direct conjunction with the name there appears the word "type" or the word "American" or some other adjective indicating the true place of production, in lettering substantially as conspicuous as such name, and (ii) the distilled spirits to which the name is applied conform to the distilled spirits of that particular region. The following are examples of distinctive types of distilled spirits with geographical names that have not become generic: Eau de Vie de Dantzic (Danziger Goldwasser), Ojen, Swedish punch. Geographical names for distinctive types of distilled spirits shall be used to designate only distilled spirits conforming to the standard of identity, if any, for such type specified in this section, or if no such standard is so specified, then in accordance with the trade understanding of that

distinctive type.

(2) Only such geographical names for distilled spirits as the appropriate ATF officer finds have by usage and common knowledge lost their geographical significance to such extent that they have become generic shall be deemed to have become generic. Examples at London dry gin, Geneva (Hollands) gin.

(3) Geographical names that are not names for distinctive types of distilled spirits, and that have not become generic, shall not be applied to distilled spirits produced in any other place than the particular place or region indicated in the name. Examples are Cognac, Armagnac, Greek brandy, Pisco brandy, Jamaica rum, Puerto Rico rum, Demerara rum.

(4) The words "Scotch", "Scots", "Highland", or "Highlands" and similar words connoting, indicating, or commonly associated with Scotland, shall not be used to designate any product not wholly produced in Scotland.

(l) Class 12; products without geographical designations but distinctive of a particular place.

(1) The whiskies of the types specified in paragraphs (b) (1), (4), (5), and (6) of this section are distinctive products of the United States and if produced in a foreign country shall be designated by the applicable designation prescribed in such paragraphs, together with the words "American type" or the words "produced (distilled, blended) in __", the blank to be filled in with the name of the foreign country: *Provided*, That the word "bourbon" shall not be used to describe any whisky or whisky-based distilled spirits not produced in the United States. If whisky of any of these types is composed in part of whisky or whiskies produced in a foreign country there shall be stated, on the brand label, the percentage of such whisky and the country of origin thereof.

(2) The name for other distilled spirits which are distinctive products of a particular place or country, an example is Habanero, shall not be given to the product of any other place or country unless the designation for such product includes the word "type" or an adjective such as "American", or the like, clearly indicating the true place of production. The provision for place of production shall not apply to designations which by usage and common knowledge have lost their geographical significance to such an extent that the appropriate ATF officer finds they have become generic. Examples are Slivovitz, Zubrovka, Aquavit, Arrack, and Kirschwasser.

[T.D. 7020, 34 FR 20337, Dec. 30, 1969, as amended by T.D. ATF-7, 38 FR 33471, Dec. 5, 1973; T.D. ATF-36, 41 FR 47426, Oct. 29, 1976; T.D. ATF-37, 41 FR 48121, Nov. 2, 1976; T.D. ATF-48, 44 FR 55839, Sept. 28, 1979; T.D. ATF-62, 44 FR 71620, Dec. 11, 1979; T.D. ATF-66, 45 FR 40547, June 13, 1980; T.D. ATF-94, 46 FR 55096, Nov. 6, 1981; T.D. ATF-259, 52 FR 41422, Oct. 28, 1987; T.D. ATF-324, 57 FR 29020, June 30, 1992; T.D. ATF-425, 65 FR 11891, Mar. 7, 2000]

§5.23 Alteration of class and type.

(a) Additions.

(1) The addition of any coloring, flavoring, or blending materials to any class and type of distilled spirits, except as otherwise provided in this section, alters the class and type thereof and the product shall be appropriately redesigned.

(2) There may be added to any class or type of distilled spirits, without changing the class or type thereof, (i) such harmless coloring, flavoring, or blending materials as are an essential component part of the particular class or type of distilled spirits to which added, and (ii) Harmless coloring, flavoring, or blending materials such as caramel, straight malt or straight rye malt whiskies, fruit juices, sugar, infusion of oak chips when approved by the Director, or wine, which are not an essential component part of the particular distilled spirits to which added, but which are customarily employed therein in accordance with established trade usage, if such coloring, flavoring, or blending materials do not total more than 2½ percent by volume of the finished product.

(3) "Harmless coloring, flavoring, and blending materials" shall not include (i) any material which would render the product to which it is added an imitation, or (ii) any material, other than caramel, infusion of oak chips, and sugar, in the case of Cognac brandy; or (iii) any material whatsoever in the case of neutral spirits or straight whiskey, except that vodka may be treated with sugar in an amount not to exceed 2 grams per liter and a trace amount of citric acid.

(b) *Extractions.*

The removal from any distilled spirits of any constituents to such an extent that the product does not possess the taste, aroma, and characteristics generally attributed to that class or type of distilled spirits alters the class and type thereof, and the product shall be appropriately redesignated. In addition, in the case of straight whisky the removal of more than 15 percent of the fixed acids, or volatile acids, or esters, or soluble solids, or higher alcohols, or more than 25 percent of the soluble color, shall be deemed to alter the class or type thereof.

(c) *Exceptions.*

(1) This section shall not be construed as in any manner modifying the standards of identity for cordials and liqueurs, flavored brandy, flavored gin, flavored rum, flavored vodka, and flavored whiskey or as authorizing any product which is defined in §5.22(j), Class 10, as an imitation to be otherwise designated.

(2) [Reserved]

[T.D. 7020, 34 FR 20337, Dec. 30, 1969, as amended by T.D. ATF-360, 59 FR 67222, 67223, Dec. 29, 1994; T.D. ATF-369, 61 FR 67327, Dec. 29, 1995]

Subpart Ca--Formulas

SOURCE: T.D. ATF-62, 44 FR 71620, Dec. 11, 1979, unless otherwise noted.

§5.25 Application.

The requirements of this subpart shall apply to:

(a) Proprietors of distilled spirits plants qualified as processors under 27 CFR part 19;

(b) Persons in Puerto Rico who manufacture distilled spirits products for shipment to the United States. Formulas need only be filed for those products which will be shipped to the United States; and

(c) Persons who ship into the United States, Virgin Islands distilled spirits products.

§5.26 Formula requirements.

(a) *General.*

An approved formula is required to blend, mix, purify, refine, compound, or treat spirits in a manner which results in a change of character, composition, class or type of the spirits. Form 5110.38 (27-B Supplemental) shall be filed in accordance with the instructions on the form and shall designate all ingredients and, if required, the process used. Any approved formula on Form 27-B Supplemental or Form 5110.38 shall remain in effect until revoked, superseded, or voluntarily surrendered. Any existing qualifying statements as to the rate of tax or the limited use of drawback flavors appearing on a Form 27-B Supplemental are obsolete.

(b) *Change in formula.*

Any change in an approved formula shall require the filing of a new Form 5110.38. After a change in a formula is approved, the original formula shall be surrendered to the appropriate ATF officer.

[T.D. 7020, 34 FR 20337, Dec. 30, 1969 as amended by T.D. ATF-425, 65 FR 11891, Mar. 7, 2000]

§5.27 Formulas.

Formulas are required for distilled spirits operations which change the character, composition, class or type of spirits as follows:

- (a) The compounding of spirits through the mixing of any coloring, flavoring, wine, or other material with distilled spirits;
- (b) The manufacture of an intermediate product to be used exclusively in other distilled spirits products on bonded premises;
- (c) Any filtering or stabilizing process which results in a product which does not possess the taste, aroma, and characteristics generally attributed to that class or type of distilled spirits; and, in the case of straight whisky, results in the removal of more than 15 percent of the fixed acids, volatile acids, esters, soluble solids, or higher alcohols, or more than 25 percent of the soluble color;
- (d) The mingling of spirits (including merchandise returned to bond) which differ in class or type of materials from which produced;
- (e) The mingling of spirits stored in charred cooperage with spirits stored in plain or reused cooperage, or the mixing of spirits that have been treated with wood chips with spirits not so treated, or the mixing of spirits that have been subjected to any treatment which changes their character with spirits not so treated, unless it is determined that the composition of the spirits is the same, notwithstanding the storage in different kinds of cooperage or the treatment of a portion of the spirits;
- (f) The use (except as authorized for production or storage operations as provided by 27 CFR part 19) of any physical or chemical process or any apparatus which accelerates the maturing of the spirits;
- (g) The steeping or soaking of fruits, berries, aromatic herbs, roots, seeds, etc., in

spirits or wines;

(h) The artificial carbonating of spirits;

(i) The blending in Puerto Rico of spirits with any liquors manufactured outside of Puerto Rico;

(j) The production of gin by--

(1) Redistillation over juniper berries and other natural aromatics, or the extracted oils of such, of spirits distilled at or above 190 degrees of proof, free from impurities, including spirits of such a nature recovered by redistillation of imperfect gin spirits; and

(2) Mixing gin with other spirits;

(k) The treatment of gin by--

(1) Addition or abstraction of any substance or material other than pure water after redistillation in a manner that would change its class and type designation; and

(2) Addition of any substance or material other than juniper berries or other natural aromatics, or the extracted oils of such, or pure water to the spirits, before or during redistillation, in a manner that would change its class and type designation;

(l) The production of vodka by--

(1) Treatment of neutral spirits with not less than one ounce of activated carbon per 100 wine gallons of spirits;

(2) Redistillation of pure spirits so as to be without distinctive character, aroma, taste, or color;

(3) Mixing with other spirits or with any other substance or material except pure water, after production; and

(m) The recovery of spirits by redistillation from distilled spirits products containing other alcoholic ingredients and from spirits which have previously been entered for deposit. However, no formula shall be required for spirits redistilled into any type of neutral spirits other than vodka or spirits redistilled at less than 190 degrees of proof which lack the taste, aroma and other characteristics generally attributed to whisky, brandy, rum, or gin, and are designated as "Spirits," preceded or followed by a word or phrase descriptive of the material from which produced. Such spirits redistilled on or after July 1, 1972, may not be designated "Spirits Grain" or "Grain Spirits."

(26 U.S.C. 7805 (68A Stat. 917, as amended); 27 U.S.C. 205 (49 Stat. 981, as amended))

[T.D. ATF-198, 50 FR 8463, Mar. 1, 1985, as amended by T.D. ATF-259, 52 FR 41423, Oct. 28, 1987]

§5.28 Adoption of predecessor's formulas.

The adoption by a successor of approved Forms 5110.38 (27-B Supplemental) shall be in the form of an application filed with the appropriate ATF officer. The application shall list the formulas for adoption by:

- (a) Formula number,
- (b) Name of product, and
- (c) Date of approval.

The application shall clearly show that the predecessor has authorized the use of his previously approved formulas by the successor.

[T.D. 7020, 34 FR 20337, Dec. 30, 1969 as amended by T.D. ATF-425, 65 FR 11891, Mar. 7, 2000]

Subpart D--Labeling Requirements for Distilled Spirits

§5.31 General.

(a) *Application.*

No person engaged in business as a distiller, rectifier, importer, wholesaler, or warehouseman and bottler, directly or indirectly, or through an affiliate, shall sell or ship or deliver for sale or shipment or otherwise introduce in interstate or foreign commerce, or receive therein, or remove from customs custody, any distilled spirits in bottles, unless such bottles are marked, branded, labeled, or packaged, in conformity with §§5.31 through 5.42.

(b) *Alteration of labels.*

It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label on distilled spirits held for sale in interstate or foreign commerce or after shipment therein, except:

- (1) As authorized by Federal law;
- (2) When an additional labeling or relabeling of bottled distilled spirits is accomplished with labels covered by certificates of label approval which comply with the requirements of this part and with State law;
- (3) That there may be added to the bottle, after removal from customs custody, or prior to or after removal from bonded premises, without application for permission to relabel, a label identifying the wholesale or retail distributor thereof or identifying the purchaser or consumer, and containing no references whatever to the characteristics of the product.

(26 U.S.C. 7805 (68A Stat. 917, as amended); 27 U.S.C. 205 (49 Stat. 981, as amended))

[T.D. 7020, 34 FR 20637, Dec. 30, 1969, as amended by T.D. ATF-62, 44 FR 71621, Dec. 11, 1979; T.D. ATF-198, 50 FR 8464, Mar. 1, 1985]

§5.32 Mandatory label information.

There shall be stated:

- (a) On the brand label:
 - (1) Brand name.
 - (2) Class and type, in accordance with §5.35.

(3) Alcoholic content, in accordance with §5.37.

(4) In the case of distilled spirits packaged in containers for which no standard of fill is prescribed in §5.47, net contents in accordance with §5.38(b) or §5.38a(b)(2).

(b) On the brand label or on a back label:

(1) Name and address, in accordance with §5.36.

(2) In the case of imported spirits, the country of origin, in accordance with §5.36.

(3) In the case of distilled spirits packaged in containers conforming to the standards of fill prescribed in §5.47 or §5.47a, net contents in accordance with §5.38(a), §5.38a(a), or §5.38a(b)(1).

(4) Coloring or flavoring, in accordance with §5.39.

(5) A statement that the product contains FD&C Yellow No. 5, where that coloring material is used in a product bottled on or after October 6, 1984.

(6) The following statement when saccharin is present in the finished product: Use of this product may be hazardous to your health. This product contains saccharin which has been determined to cause cancer in laboratory animals.

(7) *Declaration of sulfites.* There shall be stated, the statement "Contains sulfites" or "Contains (a) sulfiting agent(s)" or a statement identifying the specific sulfiting agent where sulfur dioxide or a sulfiting agent is detected at a level of 10 or more parts per million, measured as total sulfur dioxide. The sulfite declaration may appear on a strip label or neck label in lieu of appearing on the front or back label. The provisions of this paragraph shall apply to:

(i) Any certificate of label approval issued on or after January 9, 1987;

(ii) Any distilled spirits bottled on or after July 9, 1987, regardless of the date of issuance of the certificate of label approval; and,

(iii) Any distilled spirits removed on or after January 9, 1988.

(8) Percentage of neutral spirits and name of commodity from which distilled, or in the case of continuously distilled neutral spirits or gin, the name of the commodity only, in accordance with §5.39.

(9) A statement of age or age and percentage, when required, in accordance with §5.40.

(10) State of distillation of domestic types of whisky and straight whisky, except light whisky and blends, in accordance with §5.36.

(c) In the case of a container which has been excepted under the provisions of §5.46(d), the information required to appear on the "brand label," as defined, may appear elsewhere on such container if it can be demonstrated that the container cannot reasonably be so designed that the required brand label can be properly affixed.

[T.D. 7020, 34 FR 20337, Dec. 30, 1969, as amended by T.D. ATF-25, 41 FR 10220, Mar. 10, 1976; 41 FR 11022, Mar. 16, 1976; T.D. ATF-94, 46 FR 55096, Nov. 6, 1981; T.D. ATF-150, 48 FR 45556, Oct. 6, 1983; 48 FR 46518, Oct. 13, 1983; T.D. ATF-220, 50 FR 51852, Dec. 20, 1985; T.D. ATF-236, 51 FR 34710, Sept. 30, 1986; T.D. ATF-282, 54 FR 7162, Feb. 16, 1989; T.D. ATF-312, 56 FR 31077, July 9, 1991; T.D. ATF-344, 58 FR 40354, July 28, 1993; T.D. ATF-425, 65 FR 11891, Mar. 7, 2000]

§5.33 Additional requirements.

(a) *Contrasting background.*

Labels shall be so designed that the statements required by this subpart are readily legible under ordinary conditions, and such statements shall be on a contrasting background.

(b) *Location of statements and size of type.*

(1) Statements required by this subpart, except brand names, shall appear generally parallel to the base on which the bottle rests as it is designed to be displayed or shall be otherwise equally conspicuous.

(2) Statements required by this subpart, except brand names and the declaration of sulfites in §5.32(b)(7), shall be separate and apart from any other descriptive or explanatory matters.

(3) If not separate and apart from other descriptive or explanatory matter printed on the label, the statement declaring the presence of sulfites shall be of a size substantially more conspicuous than surrounding nonmandatory labeling information.

(4) Statements of the type of distilled spirits shall be as conspicuous as the statement of the class to which it refers, and in direct conjunction therewith.

(5) Statements required by this subpart, except brand names, shall be in script, type, or printing not smaller than 2 millimeters (or 8-point gothic until January 1, 1983), except that, in the case of labels on bottles of 200 milliliters or less capacity, such script, type, or printing shall not be smaller than 1 millimeter (or 6-point gothic until January 1, 1983).

(6) When net contents are stated either in metric measures or in both metric and U.S. fluid measures, statements required by the subpart, except brand names, shall be in script, type, or printing not smaller than 2 millimeters (or 8-point gothic until January 1, 1983), except that, in the case of labels on bottles of 200 milliliters or less capacity such script, type, or printing shall not be smaller than 1 millimeter (or 6-point gothic until January 1, 1983).

(c) *English language.*

The requirements of this subpart shall be stated in the English language, except that the brand name need not be in English, and for products bottled for consumption within Puerto Rico the required information may be stated in the Spanish language if the net contents and, if the product is an imitation, the word "imitation" are also stated in the English language.

(d) *Location of label.*

Labels shall not obscure government stamps or be obscured thereby. Labels shall not obscure any markings or information required to be permanently marked in the bottle by other U.S. Treasury Department regulations.

(e) *Labels firmly affixed.*

Labels which are not an integral part of the bottle shall be affixed to bottles in such manner that they cannot be removed without thorough application of water or other solvents.

(f) *Additional information on labels.*

Labels may contain information other than the mandatory label information required by this subpart if the information does not conflict with, or in any manner qualify, statements required by this part.

(g) *Contents of bottles.*

A complete and accurate statement of the contents of the bottles to which labels are to be or have been affixed shall be submitted, on request, to the appropriate ATF officer.

[T.D. 7020, 34 FR 20337, Dec. 30, 1969, as amended by T.D. ATF-66, 45 FR 40548, June 13, 1980; T.D. ATF-94, 46 FR 55096, Nov. 6, 1981; T.D. ATF-236, 51 FR 34710, Sept. 30, 1986; T.D. ATF-425, 65 FR 11891, Mar. 7, 2000]

§5.34 Brand names.

(a) *Misleading brand names.*

No label shall contain any brand name, which, standing alone, or in association with other printed or graphic matter, creates any impression or inference as to the age, origin, identity, or other characteristics of the product unless the appropriate ATF officer finds that such brand name (when appropriately qualified if required) conveys no erroneous impressions as to the age, origin, identity, or other characteristics of the product.

(b) *Trade name of foreign origin.*

Paragraph (a) of this section does not prohibit the use by any person of any trade name or brand of foreign origin not effectively registered in the U.S. Patent Office on August 29, 1935, which has been used by such person or his predecessors in the United States for a period of at least 5 years immediately preceding August 29, 1935: *Provided*, That if such trade name or brand is used, the designation of the product shall be qualified by the name of the locality in the United States in which produced, and such qualification shall be in script, type, or printing as conspicuous as the trade name or brand.

[T.D. 7020, 34 FR 20337, Dec. 30, 1969 as amended by T.D. ATF-425, 65 FR 11891, Mar. 7, 2000]

§5.35 Class and type.

(a) *Designation of product.*

The class and type of distilled spirits shall be stated in conformity with §5.22 if

defined therein. In all other instances the product shall be designated in accordance with trade and consumer understanding thereof, or, if no such understanding exists, by a distinctive or fanciful name, and in either case (except as provided in paragraph (b)(2) of this section) followed by a truthful and adequate statement of composition. The word "cordial" or "liqueur" need not be stated in the case of cordials and liqueurs unless the appropriate ATF officer finds such word is necessary to clearly indicate that the product is a cordial or liqueur.

(b) *Products designed in accordance with trade and consumer understanding.*

In the case of products designated in accordance with trade and consumer understanding:

(1) A statement of the classes and types of distilled spirits used in the manufacture thereof shall be deemed a sufficient statement of composition in the case of highballs, cocktails, and similar prepared specialties when the designation adequately indicates to the consumer the general character of the product.

(2) No statement of composition is required if the designation through general and established usage adequately indicates to the consumer the composition of the product.

A product shall not bear a designation which indicates it contains a class or type of distilled spirits unless the distilled spirits therein conform to such class and type.

(c) *Origin of whiskies in mixtures.*

In the case of any of the types of whisky defined in §5.22(b), Class 2, which contains any whisky or whiskies produced in a country other than that indicated by the type designation, there shall be stated on the brand label the percentage of such whisky and the country or origin thereof. In the case of mixtures of whisky, not conforming to any type designation in §5.22(b), Class 2, the components of which were distilled in more than one country, there shall be stated in direct conjunction with the class designation "whisky" a truthful and adequate statement of the composition of the product.

(d) *Whisky manufactured in Scotland, Ireland, or Canada.*

All whisky manufactured in Scotland, Ireland, or Canada, shall be deemed to be Scotch, Irish, or Canadian whisky, and shall be so designated, in conformity with §5.22(b) (7), (8), and (9), unless the application of such designation to the particular product will result in consumer deception, or unless such a product is not entitled to such designation under the laws of the country in which manufactured.

(e) *Cordials and liqueurs.*

The alcoholic components of cordials and liqueurs may, but need not, be stated on labels.

[T.D. 7020, 34 FR 20337, Dec. 30, 1969 as amended by T.D. ATF-425, 65 FR 11891, Mar. 7, 2000]

§5.36 Name and address.

(a) *"Bottled by"*.

(1) On labels of domestic distilled spirits there shall be stated the phrase "bottled by", "packed by", or "filled by", immediately followed by the name (or trade name) of the bottler and the place where such distilled spirits are bottled. If the bottler is the actual bona fide operator of more than one distilled spirits plant engaged in bottling operations, there may, in addition, be stated immediately following the name (or trade name) of such bottler the addresses of such other plants.

(2) Where distilled spirits are bottled by or for the distiller thereof, there may be stated, in lieu of the phrase "bottled by", "packed by", or "filled by", followed by the bottler's name (or trade name) and address, the phrase "distilled by", followed by the name, or the trade name under which the particular spirits were distilled, or (except in the case of distilled spirits labeled as bottled in bond) any trade name shown on the distiller's permit (covering the premises where the particular spirits were distilled), and the address (or addresses) of the distiller.

(3) Where "straight whiskies" of the same type which have been produced in the same State by two or more different distillers are combined (either at time of bottling or at a warehouseman's bonded premises for further storage) and subsequently bottled and labeled as "straight whisky," such "straight whisky" shall be labeled in accordance with the requirements of paragraph (a)(1) of this section. Where such "straight whisky" is bottled by or for the distillers thereof, there may be stated on the label, in lieu of the requirements of paragraph (a)(1) of this section, the phrase "distilled by," followed by the names (or trade names) of the different distillers who distilled a portion of the "straight whisky," the addresses of the distilleries where the "straight whisky" was distilled, and the percentage of "straight whisky" distilled by each distiller (with a tolerance of plus or minus 2 percent). In the case where "straight whisky" is made up of a mixture of "straight whiskies" of the same type from two or more different distilleries of the same proprietor located within the same State, and where the "straight whisky" is bottled by or for the proprietor thereof, such "straight whisky" may be labeled, in lieu of the requirements of paragraph (a)(1) of the this section, with the phrase "distilled by" followed by the name (or trade name) of the proprietor and the addresses of the different distilleries which distilled a portion of the "straight whisky."

(4) Where distilled spirits are bottled by or for the rectifier thereof, there may be stated, in lieu of the phrase "bottled by", "packed by", or "filled by", followed by the bottler's name (or trade name) and address, the phrases "blended by", "made by", "prepared by", "manufactured by", or "produced by" (whichever may be appropriate to the act of rectification involved) followed by the name (or trade name), and the address (or addresses) of the rectifier.

(5) In addition to the requirements of paragraphs (a)(1) and (a)(2) of this paragraph, the labels of bottled in bond spirits shall bear the real name of the distillery or the trade name under which the distillery produced and warehoused the spirits, the number of the plant in which produced and the number of the plant in which bottled.

(6) The label may state the address of the proprietor's principal place of business in lieu of the place where the bottling, distilling or rectification operation occurred,

if the address where the operation occurred is indicated by printing, coding, or other markings, on the label or on the bottle.

(b) *"Imported by".*

(1) On labels of imported distilled spirits, bottled prior to importation, there shall be stated the words "imported by", "imported exclusively by", or a similar appropriate phrase, and immediately thereafter the name of the importer, or exclusive agent, or sole distributor, or other person responsible for the importation, together with the principal place of business in the United States of such person.

(2) On labels of imported distilled spirits bottled after importation there shall be stated:

(i) The name of the bottler and place where bottled, immediately preceded by the words "bottled by", "packed by", or "filled by"; or

(ii) The name of the bottler and place where bottled, immediately preceded by the words "bottled by", "packed by", or "filled by" and in conjunction therewith the name and address of the person responsible for the importation, in the manner prescribed in paragraph (b)(1) of this section; or

(iii) The name and principal place of business in the United States of the person responsible for the importation, if the spirits are bottled for such person, immediately preceded by the phrase "imported by and bottled (packed), (filled) in the United States for" (or a similar appropriate phrase); or,

(iv) In the case of imported distilled spirits bottled after importation by the person responsible for the importation, the words "imported and bottled (packed), (filled) by", "imported and bottled (packed), (filled) exclusively by", or a similar appropriate phrase, and immediately thereafter the name of such person and the address of the place where bottled or the address of such person's principal place of business.

(c) *Post office address.*

The "place" stated shall be the post office address, except that the street address may be omitted. No additional places or addresses shall be stated for the same person, firm or corporation, unless (1) such person or retailer is actively engaged in the conduct of an additional bona fide and actual alcoholic beverage business at such additional place or address, and (2) the label also contains in direct conjunction therewith, appropriate descriptive material indicating the function occurring at such additional place or address.

(d) *State of distillation.*

Except in the case of "light whisky", "blended light whisky", "blended whisky", "a blend of straight whiskies", or "spirit whisky", the State of distillation shall be shown on the label of any whisky produced in the United States if the whisky is not distilled in the State given in the address on the brand label. The appropriate ATF officer may, however, require the State of distillation to be shown on the label or he may permit such other labeling as may be necessary to negate any misleading or deceptive impression which might be created as to the actual State of distillation. In

the case of "light whisky", as defined in §5.22(b)(3), the State of distillation shall not appear in any manner on any label, when the appropriate ATF officer finds such State is associated by consumers with an American type whisky, except as a part of a name and address as set forth in paragraph (a) of this section.

(e) *Country of origin.*

On labels of imported distilled spirits there shall be stated the country of origin in substantially the following form "Product of _____", the blank to be filled in with the name of the country of origin.

(f) *Trade names.*

The trade name of any permittee appearing on any label must be identical to the trade name listed on the permittee's basic permit.

(26 U.S.C. 7805 (68A Stat. 917, as amended); 27 U.S.C. 205 (49 Stat. 981, as amended))

[T.D. 7020, 34 FR 20637, Dec. 30, 1969, as amended by T.D. ATF-62, 44 FR 71621, Dec. 11, 1979; T.D. ATF-198, 50 FR 8464, Mar. 1, 1985; T.D. ATF-259, 52 FR 41423, Oct. 28, 1987; T.D. ATF-260, 52 FR 42101, Nov. 3, 1987; T.D. ATF-425, 65 FR 11891, Mar. 7, 2000]

§5.37 Alcohol content.

(a) *Statements.*

(1) *Mandatory statement.* The alcohol content for distilled spirits shall be stated in percent-alcohol-by-volume. Products such as "Rock and Rye. or similar products containing a significant amount of solid material shall state the alcohol content at the time of bottling as follows: "Bottled at ____ percent-alcohol-by-volume."

(2) *Optional statement.* In addition, the label may also state the alcohol content in degrees of proof if this information appears in direct conjunction (i.e. with no intervening material) with the statement expressed in percent-alcohol-by-volume. If both forms of alcohol content are shown, the optional statement in degrees of proof shall be placed in parentheses, in brackets, or otherwise distinguished from the mandatory statement in percent-alcohol-by-by-volume to emphasize the fact that both expressions of alcohol content mean the same thing.

(b) *Tolerances.*

The following tolerances shall be allowed (without affecting the labeled statement of alcohol content) for losses of alcohol content occurring during bottling:

(1) Not to exceed 0.25 percent alcohol by volume for spirits containing solids in excess of 600 mg per 100 ml; or

(2) Not to exceed 0.25 percent alcohol by volume for any spirits product bottled in 50 or 100 ml size bottles; or

(3) Not to exceed 0.15 percent alcohol by volume for all other spirits.

(Approved by the Office of Management and Budget under Control Number 1512-0482)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1394, as amended (26 U.S.C. 5301(a)); 49 Stat. 917, as amended (27 U.S.C. 205(e))

§5.38 Net contents.

(a) *Bottles conforming to metric standards of fill.*

The net contents of distilled spirits shall be stated in the same manner and form as set forth in the standards of fill in §5.47a.

(b) *Bottles not conforming to the metric standards of fill.*

The net contents for distilled spirits bottled before January 1, 1980, in bottles not conforming to the metric standards of fill, shall be stated in the same manner and form as set forth in §5.47(a), except for cordials and liqueurs, cocktails, highballs, bitters and specialties, as specified by the Director. The net contents for these specialty products shall be stated in U.S. measure (i.e., gallons, quarts, pints, fluid ounces).

(c) *Net contents marked in bottles.*

The net contents need not be marked on any label if they are legibly blown, etched, sandblasted, marked by underglaze coloring, or otherwise permanently marked by any method approved by the appropriate ATF officer on the side, front, or back of the container in an unobscured location. Containers of 200 ml or greater capacity shall bear letters and figures of not less than one-quarter inch height.

(d) *Qualifying statements.*

Words or phrases qualifying statements of net contents are prohibited.

(Sec. 5, 49 Stat. 981, as amended (27 U.S.C. 205); 26 U.S.C. 5301)

[T.D. ATF-146, 48 FR 43321, Sept. 23, 1983, as amended by T.D. ATF-249, 52 FR 5956, Feb. 27, 1987; T.D. ATF-425, 65 FR 11891, Mar. 7, 2000]

§5.39 Presence of neutral spirits and coloring, flavoring, and blending materials.

(a) *Neutral spirits and name of commodity.*

(1) In the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, there shall be stated the percentage of neutral spirits so used and the name of the commodity from which such neutral spirits have been distilled. The statement of percentage and the name of the commodity shall be made in substantially the following form: "____% neutral spirits distilled from _____ (insert grain, cane products, or fruit as appropriate)"; or "____% neutral spirits (vodka) distilled from _____ (insert grain, cane products, or fruit, as appropriate)"; or "____% grain (cane products), (fruit) neutral spirits", or "____% grain spirits."

(2) In the case of neutral spirits or of gin produced by a process of continuous distillation, there shall be stated the name of the commodity from which such neutral spirits or gin have been distilled. The statement of the name of the commodity shall be made in substantially the following form: "Distilled from

grain", or "Distilled from cane products", or "Distilled from fruit".

(b) *Coloring materials.*

The words "artificially colored" shall be stated on the label of any distilled spirits containing synthetic or natural materials which primarily contribute color, or when the label conveys the impression that the color is derived from a source other than the actual source, except that:

- (1) If no coloring material other than natural flavoring material has been added, there may be stated in lieu of the words "artificially colored" a truthful and adequate statement of the source of the color;
- (2) If no coloring material other than those certified as suitable for use in foods by the Food and Drug Administration has been added, there may be stated in lieu of the words "artificially colored," the words "certified color added"; and
- (3) If no coloring material other than caramel has been added, there may be stated in lieu of the words "artificially colored," the words "colored with caramel," or a substantially similar statement, but no such statement is required for the use of caramel in brandy, rum, or tequila, or in any type of whisky other than straight whisky.

(c) *Treatment with wood.*

The words "colored and flavored with wood _____ (insert chips, slabs, etc., as appropriate)" shall be stated as a part of the class and type designation for whisky and brandy treated, in whole or in part, with wood through percolation, or otherwise, during distillation or storage, other than through contact with the oak container. *Provided*, that the above statement shall not apply to brandy treated with an infusion of oak chip in accordance with §5.23(a).

[T.D. 720, 34 FR 20637, Dec. 30, 1969, as amended by T.D. ATF-94, 46 FR 55097, Nov. 6, 1981; T.D. ATF-292, 55 FR 1065, Jan. 11, 1990]

§5.40 Statements of age and percentage.

(a) *Statements of age and percentage for whisky.*

In the case of straight whisky bottled in conformity with the bottled in bond labeling requirements and of domestic or foreign whisky, whether or not mixed or blended, all of which is 4 years old or more, statements of age and percentage are optional. As to all other whiskies there shall be stated the following:

- (1) In the case of whisky, whether or not mixed or blended but containing no neutral spirits, the age of the youngest whisky. The age statement shall read substantially as follows: "____ years old."
- (2) In the case of whisky, containing neutral spirits, if any of the straight whisky and/or other whisky is less than 4 years old, the percentage by volume of straight whisky and/or other whisky, and the age of the straight whisky (the youngest if two or more) and the age of such other whisky (the youngest if two or more). If all the straight whisky and/or other whisky is 4 years or more old, the age and percentage statement for such whiskies is optional. The age and percentage

statement for straight whiskies and/or other whisky, whether required or optional, shall be stated in immediate conjunction with the neutral spirits statement required by §5.39, and shall read substantially as follows:

- (i) If only one straight whisky and no other whisky is contained in the blend: " percent straight whisky years old."
- (ii) If more than one straight whisky and no other whisky is contained in the blend: " percent straight whiskies years or more old." The age blank shall be filled in with the age of the youngest straight whisky. In lieu of the foregoing, a statement may be made of the ages and percentages of each of the straight whiskies contained in the blend: " percent straight whisky years old, percent straight whisky years old, and percent straight whisky years old."
- (iii) If only one straight whisky and one other whisky is contained in the blend: " percent straight whisky years old, percent whisky years old."
- (iv) If more than one straight whisky and more than one other whisky is contained in the blend: " percent straight whiskies years or more old, percent whiskies years or more old." The age blanks shall be filled in with the ages of the youngest straight whisky and the youngest other whisky. In lieu of the foregoing, a statement may be made of the ages and percentages of each of the straight whiskies and other whiskies contained in the blend: " percent straight whisky years old, percent straight whisky years old, percent whisky years old, and percent whisky years old."
- (3) In the case of imported whiskies described in §5.22(l), Class 12, the labels shall state the ages and percentages in the same manner and form as is required for the same type of whisky produced in the United States.
- (4) Notwithstanding the foregoing provisions of this paragraph, in the case of whisky produced in the United States and stored in reused oak containers, except for corn whisky, and for light whisky produced on or after January 26, 1968, there shall be stated in lieu of the words " years old" the period of storage in reused oak containers as follows: " stored years in reused cooperage."
- (5) Optional age statements shall appear in the same form as required age statements.

(b) *Statements of age for rum, brandy, and Tequila.*

Age may, but need not, be stated on labels of rums, brandies, and Tequila, except that an appropriate statement with respect to age shall appear on the brand label in case of brandy (other than immature brandies and fruit brandies which are not customarily stored in oak containers) not stored in oak containers for a period of at least 2 years. If age is stated, it shall be substantially as follows: " years old"; the blank to be filled in with the age of the youngest distilled spirits in the product.

(c) *Statement of storage for grain spirits.*

In case of grain spirits, the period of storage in oak containers may be stated in

immediate conjunction with the required percentage statement; for example, " __ % grain spirits stored __ years in oak containers."

(d) *Other distilled spirits.*

Age, maturity, or similar statements or representations as to neutral spirits (except for grain spirits as stated in paragraph (c) of this section), gin, liqueurs, cordials, cocktails, highballs, bitters, flavored brandy, flavored gin, flavored rum, flavored vodka, flavored whisky, and specialties are misleading and are prohibited from being stated on any label.

(e) *Miscellaneous age representations.*

(1) Age may be understated but shall not be overstated.

(2) If any age, maturity, or similar representation is made relative to any distilled spirits (such representations for products enumerated in paragraph (d) of this section are prohibited), the age shall also be stated on all labels where such representation appears, and in a manner substantially as conspicuous as such representation: *Provided*. That the use of the word "old" or other word denoting age, as part of the brand name, shall not be deemed to be an age representation: *And provided further*, That the labels of whiskies and brandies (except immature brandies) not required to bear a statement of age, and rum and Tequila aged for not less than 4 years, may contain general inconspicuous age, maturity or similar representations without the label bearing an age statement.

(26 U.S.C. 7805 (68A Stat. 917, as amended); 27 U.S.C. 205 (49 Stat. 981, as amended))

[T.D. 7020, 34 FR 20637, Dec. 30, 1969, as amended by T.D. ATF-62, 44 FR 71621, Dec. 11, 1979; T.D. ATF-198, 50 FR 8464, Mar. 1, 1985]

§5.41 Bottle cartons, booklets and leaflets.

(a) *General.*

An individual covering, carton, or other container of the bottle used for sale at retail (other than a shipping container), or any written, printed, graphic, or other matter accompanying the bottle to the consumer buyer shall not contain any statement, design, device, or graphic, pictorial, or emblematic representation that is prohibited by §§5.31 through 5.42 on labels.

(b) *Sealed opaque cartons.*

If bottles are enclosed in sealed opaque coverings, cartons, or other containers used for sale at retail (other than shipping containers), such coverings, cartons, or other containers must bear all mandatory label information.

(c) *Other cartons.*

(1) If an individual covering, carton, or other container of the bottle used for sale at retail (other than a shipping container) is so designed that the bottle is readily removable, it may display any information which is not in conflict with the label on the bottle contained therein.

(2) Cartons displaying brand names and/or designations must display such names and designations in their entirety--brand names required to be modified, e.g. by "Brand" or "Product of U.S.A.", must also display such modification.

(3) Specialty products for which a truthful and adequate statement of composition is required must display such statement.

[T.D. 7020, 34 FR 20337, Dec. 30, 1969, as amended by T.D. ATF-36, 41 FR 47426, Oct. 29, 1976]

§5.42 Prohibited practices.

(a) *Statements on labels.*

Bottles containing distilled spirits, or any labels on such bottles, or any individual covering, carton, or other container of such bottles used for sale at retail, or any written, printed, graphic, or other matter accompanying such bottles to the consumer shall not contain:

(1) Any statement that is false or untrue in any particular, or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific or technical matter, tends to create a misleading impression.

(2) Any statement that is disparaging of a competitor's product.

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which the appropriate ATF officer finds to be likely to mislead the consumer.

(5) Any statement, design, device, or representation of or relating to any guarantee, irrespective of falsity, which the appropriate ATF officer finds to be likely to mislead the consumer. Money-back guarantees are not prohibited.

(6) A trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, or any graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely to falsely lead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization:

Provided, That this paragraph shall not apply to the use of the name of any person engaged in business as a distiller, rectifier, blender, or other producer, or as an importer, wholesaler, retailer, bottler, or warehouseman, of distilled spirits, nor to the use by any person of a trade or brand name that is the name of any living individual of public prominence or existing private or public organization, provided such trade or brand name was used by him or his predecessors in interest prior to August 29, 1935.

(b) *Miscellaneous.*

(1) Labels shall not be of such design as to resemble or simulate a stamp of the U.S. Government or any State or foreign government. Labels, other than stamps

authorized or required by this or any other government, shall not state or indicate that the distilled spirits are distilled, blended, made, bottled, or sold under, or in accordance with, any municipal, State, Federal, or foreign authorization, law, or regulations, unless such statement is required or specifically authorized by Federal, State, municipal, or foreign law or regulations. The statements authorized by this part to appear on labels for domestic distilled spirits are "Distilled (produced, barreled, warehoused, blended, or bottled, or any combination thereof, as the case may be) under United States (U.S.) Government supervision", or in the case of distilled spirits labeled as bottled in bond, "Bottled in bond under United States (U.S.) Government supervision". If the municipal, State, or Federal Government permit number is stated on a label, it shall not be accompanied by any additional statement relating thereto.

(2) If imported distilled spirits are covered by a certificate of origin or of age issued by a duly authorized official of the appropriate foreign government, the label, except where prohibited by the foreign government, may refer to such certificate or the fact of such certification, but shall not be accompanied by any additional statement relating thereto. The reference to such certificate or certification shall, in the case of Cognac, be substantially in the following form: "This product accompanied at the time of importation by an 'Acquit Regional Jaune d'Or' issued by the French Government, indicating that this grape brandy was distilled in the Cognac Region of France"; and in the case of other distilled spirits, substantially in the following form: "This product accompanied at time of importation by a certificate issued by the ____ government (name of government) indicating that the product is ____ (class and type as required to be stated on the label), and (if label claims age) that none of the distilled spirits are of an age less than stated on this label."

(3) The words "bond", "bonded", "bottled in bond", "aged in bond", or phrases containing these or synonymous terms, shall not be used on any label or as part of the brand name of domestic distilled spirits unless the distilled spirits are:

- (i) Composed of the same kind of spirits produced from the same class of materials;
- (ii) Produced in the same distilling season by the same distiller at the same distillery;
- (iii) Stored for at least four years in wooden containers wherein the spirits have been in contact with the wood surface except for gin and vodka which must be stored for at least four years in wooden containers coated or lined with paraffin or other substance which will preclude contact of the spirits with the wood surface;
- (iv) Unaltered from their original condition or character by the addition or subtraction of any substance other than by filtration, chill proofing, or other physical treatments (which do not involve the addition of any substance which will remain incorporated in the finished product or result in a change in class or type);
- (v) Reduced in proof by the addition of pure water only to 100 degrees of proof; and

(vi) Bottles at 100 degrees of proof.

In addition to the requirements of §5.36(a) (1) or (2), the label shall bear the real name of the distillery or the trade name under which the distillery produced and warehoused the spirits, and the plant (or registered distillery) number in which produced; and the plant number in which bottled. The label may also bear the name or trade name of the bottler.

(4) The words "bond", "bonded", "bottled in bond", "aged in bond", or phrases containing these or synonymous terms, shall not be used on any label or as part of the brand name of imported distilled spirits unless the distilled spirits meet in all respects the requirements applicable to distilled spirits bottled for domestic consumption, so labeled, and unless the laws and regulations of the country in which such distilled spirits are produced authorize the bottling of distilled spirits in bond and require or specifically authorize such distilled spirits to be so labeled. All spirits labeled as "bonded", "bottled in bond", or "aged in bond" pursuant to the provisions of this paragraph shall bear in direct conjunction with such statement and in script, type, or printing substantially as conspicuous as that used on such statement, the name of the country under whose laws and regulations such distilled spirits were so bottled.

(5) The word "pure" shall not be stated upon labels unless:

(i) It refers to a particular ingredient used in the production of the distilled spirits, and is a truthful representation about that ingredient; or

(ii) It is part of the bona fide name of a permittee or retailer for whom the distilled spirits are bottled; or

(iii) It is part of the bona fide name of the permittee who bottled the distilled spirits.

(6) Distilled spirits shall not be labeled as "double distilled" or "triple distilled" or any similar term unless it is a truthful statement of fact; except that "double distilled" or "triple distilled" shall not be permitted on labels of distilled spirits produced by the redistillation method when a second or third distillation step is a necessary distillation process for the production of the product.

(7) Labels shall not contain any statement, design, device, or pictorial representation which the appropriate ATF officer finds relates to, or is capable of being construed as relating to, the armed forces of the United States, or the American flag, or any emblem, seal, insignia, or decoration associated with such flag or armed forces; nor shall any label contain any statement, design, device, or pictorial representation of or concerning any flag, seal, coat of arms, crest or other insignia, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated.

(8) Curative and therapeutic claims. Labels shall not contain any statement, design, representation, pictorial representation, or device representing that the use of distilled spirits has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression.

(26 U.S.C. 7805 (68A Stat. 917, as amended); 27 U.S.C. 205 (49 Stat. 981, as amended))

[T.D. 7020, 34 FR 20637, Dec. 30, 1969, as amended by T.D. ATF-62, 44 FR 71621, Dec. 11, 1979; T.D. ATF-180, 49 FR 31673, Aug. 8, 1984; 49 FR 35768. Sept. 12, 1984; T.D. ATF-198, 50 FR 8464, Mar. 1, 1985; 50 FR 23410, June 4, 1985; T.D. ATF-425, 65 FR 11891, Mar. 7, 2000]

Subpart E--Standards of Fill for Bottled Distilled Spirits

§5.45 Application.

No person engaged in business as a distiller, rectifier, importer, wholesaler, or warehouseman and bottler, directly or indirectly, or through an affiliate, shall sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or receive therein or remove from customs custody any distilled spirits in bottles unless such distilled spirits are bottled and packed in conformity with §§5.46 through 5.47a.

(Sec. 5, 49 Stat. 981, as amended (27 U.S.C. 205); 26 U.S.C. 5301)

[T.D. ATF-25, 41 FR 10221, Mar. 10, 1976; T.D. ATF-146, 48 FR 43321, Sept. 23, 1983]

§5.46 Standard liquor bottles.

(a) General.

A standard liquor bottle shall be one so made and formed, and so filled, as not to mislead the purchaser. An individual carton or other container of a bottle shall not be so designed as to mislead purchasers as to the size of the bottles.

(b) Headspace.

A liquor bottle of a capacity of 200 milliliters or more shall be held to be so filled as to mislead the purchaser if it has a headspace in excess of 8 percent of the total capacity of the bottle after closure.

(c) Design.

A liquor bottle shall be held (irrespective of the correctness of the stated net contents) to be so made and formed as to mislead the purchaser, if its actual capacity is substantially less than the capacity it appears to have upon visual examination under ordinary conditions of purchase or use.

(d) Exceptions.

(1) Distinctive liquor bottles. The headspace and design requirements in paragraphs (b) and (c) of this section do not apply to liquor bottles that are specifically exempted by the appropriate ATF officer, pursuant to an application filed by the bottler or importer.

(2) Cross reference. For procedures regarding the issuance, denial and revocation of distinctive liquor bottle approvals, as well as appeal procedures, see part 13 of this chapter.

(Sec. 5, 49 Stat. 981, as amended (27 U.S.C. 205); 26 U.S.C. 5301)

[T.D. 7020, 34 FR 20337, Dec. 30, 1969, as amended by T.D. ATF-25, 41 FR 10221, Mar. 10, 1976; 41 FR 11022, Mar. 16, 1976; T.D. ATF-62, 44 FR 71622, Dec. 11, 1979; T.D. ATF-146, 48 FR 43321, Sept. 23, 1983; T.D. ATF-406, 64 FR 2122, Jan. 13, 1999; T.D. ATF-425, 65 FR 11891, Mar. 7, 2000]

§5.47 Standards of fill (distilled spirits bottled before January 1, 1980).

(a) Authorized standards of fill.

The standards of fill for all distilled spirits, whether domestically bottled, or imported, subject to the tolerances allowed in this section, shall be as follows:

1 gallon	4/5 pint.
1/2 gallon	1/2 pint.
1 quart	1/8 pint.
4/5 quart	1/10 pint.
1 pint	1/16 pint (brand only).

(b) Tolerances.

The following tolerances shall be allowed:

- (1) Discrepancies due to errors in measuring which occur in filling conducted in compliance with good commercial practice.
- (2) Discrepancies due to differences in the capacity of bottles, resulting solely from unavoidable difficulties in manufacturing such bottles to a uniform capacity: *Provided*, That no greater tolerance shall be allowed in case of bottles which, because of their design, cannot be made of approximately uniform capacity than is allowed in case of bottles which can be manufactured so as to be of approximately uniform capacity.
- (3) Discrepancies in measure due to differences in atmospheric conditions in various places and which unavoidably result from the ordinary and customary exposure of alcoholic beverages in bottles to evaporation. The reasonableness of discrepancies under this paragraph shall be determined on the facts in each case.

(c) Unreasonable shortages.

Unreasonable shortages in certain of the bottles in any shipment shall not be compensated by overages in other bottles in the same shipment.

(d) Limitations.

This section does not apply after December 31, 1979.

(Sec. 5, 49 Stat. 981, as amended (27 U.S.C. 205); 26 U.S.C. 5301)

[T.D. 7020, 34 FR 20337, Dec. 30, 1969, as amended by T.D. ATF-25, 41 FR 10221, Mar. 10, 1976; T.D. ATF-146, 48 FR 43321, Sept. 23, 1983]

§5.47a Metric standards of fill (distilled spirits bottled after December 31, 1979).

(a) Authorized standards of fill.

The standards of fill for distilled spirits are the following:

(1) For containers other than cans described in paragraph (a)(2), of this section--

1.75 liters

1.00 liter

750 milliliters

500 milliliters (Authorized for bottling until June 30, 1989)

375 milliliters

200 milliliters

100 milliliters

50 milliliters

(2) For metal containers which have the general shape and design of a can, which have a closure which is an integral part of the container, and which cannot be readily reclosed after opening--

355 milliliters

200 milliliters

100 milliliters

50 milliliters

(b) *Tolerances.*

The following tolerances shall be allowed:

(1) Discrepancies due to errors in measuring which occur in filling conducted in compliance with good commercial practice.

(2) Discrepancies due to differences in the capacity of bottles, resulting solely from unavoidable difficulties in manufacturing such bottles to a uniform capacity:

Provided, That no greater tolerance shall be allowed in case of bottles which, because of their design, cannot be made of approximately uniform capacity than is allowed in case of bottles which can be manufactured so as to be of approximately uniform capacity.

(3) Discrepancies in measure due to differences in atmospheric conditions in various places and which unavoidably result from the ordinary and customary exposure of alcoholic beverages in bottles to evaporation. The reasonableness of discrepancies under this paragraph shall be determined on the facts in each case.

(c) *Unreasonable shortages.*

Unreasonable shortages in certain of the bottles in any shipment shall not be compensated by overages in other bottles in the same shipment.

(d) *Distilled spirits bottled before January 1, 1980.*

Distilled spirits bottled domestically before January 1, 1980, may be marketed after December 31, 1979, if such distilled spirits were bottled in accordance with §5.47. (See §5.53 for similar provisions relating to distilled spirits imported in original containers.)

(Sec. 5, 49 Stat. 981, as amended (27 U.S.C. 203); 26 U.S.C. 5301)

[T.D. ATF-25, 41 FR 10221, Mar. 10, 1976, as amended at 41 FR 11022, Mar. 16, 1976; 41 FR 11497, Mar. 19, 1976; T.D. ATF-35, 41 FR 46859, Oct. 26, 1976; T.D. ATF-62, 44 FR 71622, Dec. 11, 1979; T.D. ATF-146, 48 FR 43321, Sept. 23, 1983; T.D. ATF-228, 51 FR 16170, May 1, 1986; T.D. ATF-326, 57 FR 31128, July 14, 1992]

Subpart F--Requirements for Withdrawal From Customs Custody of Bottled Imported Distilled Spirits

§5.51 Label approval and release.

(a) *Certificate of label approval.*

Bottled distilled spirits shall not be released from Customs custody for consumption unless there is deposited with the appropriate Customs officer at the port of entry the original or a photostatic copy of an approved certificate of label approval, ATF Form 5100.31.

(b) *Release.*

If the original or photostatic copy of ATF Form 5100.31 has been approved, the brand or lot of distilled spirits bearing labels identical with those shown thereon may be released from U.S. Customs custody.

(c) *Relabeling.*

Imported distilled spirits in U.S. Customs custody which are not labeled in conformity with certificates of label approval issued by the appropriate ATF officer must be relabeled prior to release under the supervision of the Customs officers of the port at which the spirits are located.

(d) *Statements of process.*

ATF Forms 5100.31 covering labels for gin bearing the word "distilled" as a part of the designation shall be accompanied by a statement prepared by the manufacturer, setting forth a step-by-step description of the manufacturing process.

(e) *Cross reference.* For procedures regarding the issuance, denial, and revocation of certificates of label approval, as well as appeal procedures, see part 13 of this chapter.

[T.D. ATF-66, 45 FR 40549, June 13, 1980, as amended by T.D. ATF-94, 46 FR 55097, Nov. 6, 1981; T.D. ATF-242, 51 FR 39525, Oct. 29, 1986; T.D. ATF-359, 59 FR 42160, Aug. 17, 1994; T.D. ATF-406, 64 FR 2122, Jan. 13, 1999; T.D. ATF-425, 65 FR 11891, Mar. 7, 2000]

§5.52 Certificates of age and origin.

(a) *Scotch, Irish, and Canadian whiskies.*

Scotch, Irish, and Canadian whiskies, imported in bottles, shall not be released from customs custody for consumption unless the invoice is accompanied by a certificate of origin issued by a duly authorized official of the British, Irish, or Canadian Government, certifying (1) that the particular distilled spirits are Scotch, Irish, or Canadian whisky, as the case may be, (2) that the distilled spirits have been manufactured in compliance with the laws of the respective foreign governments regulating the manufacture of whisky for home consumption, and (3) that the product conforms to the requirements of the Immature Spirits Act of such foreign governments for spirits intended for home consumption. In addition, a duly authorized official of the appropriate foreign government must certify to the age of the youngest distilled spirits in the bottle. The age certified shall be the period during which, after distillation and before bottling, the distilled spirits have been stored in oak containers.

(b) *Brandy, Cognac, and rum.*

Brandy (other than fruit brandies of a type not customarily stored in oak containers) or Cognac, imported in bottles, shall not be released from customs custody for consumption unless accompanied by a certificate issued by a duly authorized official of the appropriate foreign country certifying that the age of the youngest brandy or Cognac in the bottle is not less than 2 years, or if age is stated on the label that none of the distilled spirits are of an age less than that stated. If the label of any rum, imported in bottles, contains any statement of age, the rum shall not be released from customs custody for consumption unless accompanied by a certificate issued by a duly authorized official of the appropriate foreign country, certifying to the age of the youngest rum in the bottle. The age certified shall be the period during which, after distillation and before bottling, the distilled spirits have been stored in oak containers. If the label of any fruit brandy, not stored in oak containers, bears any statement of storage in other type containers, the brandy must be accompanied by a certificate issued by a duly authorized official of the appropriate foreign government certifying to such storage. Cognac, imported in bottles, shall not be released from customs custody for consumption unless the invoice is accompanied by a certificate issued by a duly authorized official of the French Government, certifying that the product is grape brandy distilled in the Cognac region of France and entitled to be designated as "Cognac" by the laws and regulations of the French Government.

(c) *Tequila.*

(1) Tequila, imported in bottles, shall not be released from customs custody for consumption unless a certificate of a duly authorized official of the Mexican Government that the product is entitled to be designated as Tequila under the applicable laws and regulations of the Mexican Government is filed with the application for release.

(2) If the label of any Tequila imported in bottles, contains any statement of age, the Tequila shall not be released from customs custody for consumption unless a certificate of a duly authorized official of the Mexican Government as to the age of the youngest Tequila in the bottle is filed with the application for release. The age certified shall be the period during which the Tequila has been stored in oak containers after distillation and before bottling.

(d) *Other whiskies.*

Whisky, as defined in §5.22(b) (1), (4), (5), and (6), imported in bottles, shall not be released from customs custody for consumption unless accompanied by a certificate issued by a duly authorized official of the appropriate foreign government certifying:

(1) In the case of whisky, whether or not mixed or blended but containing no neutral spirits, (i) the class and type thereof, (ii) the American proof at which produced, (iii) that no neutral spirits (or other whisky in the case of straight whisky) has been added as a part thereof or included therein, whether or not for the purpose of replacing outage, (iv) the age of the whisky, and (v) the type of oak container in which such age was acquired (whether new or reused; also whether charred or uncharred);

(2) In the case of whisky containing neutral spirits, (i) the class and type thereof, (ii) the percentage of straight whisky, if any, used in the blend, (iii) the American proof at which the straight whisky was produced, (iv) the percentage of other whisky, if any, in the blend, (v) the percentage of neutral spirits in the blend, and the name of the commodity from which distilled, (vi) the age of the straight whisky and the age of the other whisky in the blend, and (vii) the type of oak containers in which such age or ages were acquired (whether new or reused; also whether charred or uncharred).

(e) *Miscellaneous.*

Distilled spirits (other than Scotch, Irish, and Canadian whiskies, and Cognac) in bottles shall not be released from customs custody for consumption unless the invoice is accompanied by a certificate of origin issued by a duly authorized official of the appropriate foreign government, if the issuance of such certificates with respect to such distilled spirits has been authorized by the foreign government concerned, certifying as to the identity of the distilled spirits and that the distilled spirits have been manufactured in compliance with the laws of the respective foreign government regulating the manufacture of such distilled spirits for home consumption.

[T.D. 7020, 34 FR 20337, Dec. 30, 1969, as amended by T.D. ATF-7, 38 FR 33471, Dec. 5, 1973]

§5.53 Certificate of nonstandard fill.

(a) Distilled spirits imported in original containers not conforming to the metric standards of fill prescribed in §5.47a shall not be released from Customs custody after December 31, 1979:

(1) Unless the distilled spirits are accompanied by a statement signed by a duly authorized official of the appropriate foreign country, stating that the distilled spirits were bottled or packed prior to January 1, 1980; or

(2) Unless the distilled spirits are being withdrawn from a Customs bonded warehouse or foreign trade zone into which entered on or before December 31, 1979.

(b) Distilled spirits imported in 500 ml containers shall not be released from Customs custody after June 30, 1989:

(1) Unless the distilled spirits are accompanied by a certificate issued by the

government of the appropriate foreign country, stating that the distilled spirits were bottled or packed prior to July 1, 1989; or

(2) Unless the distilled spirits are being withdrawn from a Customs bonded warehouse or foreign trade zone into which entered on or before June 30, 1989.

[T.D. ATF-25, 41 FR 10222, Mar. 10, 1976, as amended by T.D. ATF-228, 51 FR 16170, May 1, 1986]

Subpart G--Requirements for Approval of Labels of Domestically Bottled Distilled Spirits

§5.55 Certificates of label approval.

(a) Requirement.

Distilled spirits shall not be bottled or removed from a plant, except as provided in paragraph (b) of this section, unless the proprietor possesses a certificate of label approval, ATF Form 5100.31, covering the labels on the bottle, issued by the appropriate ATF officer pursuant to application on such form. Application for certificates of label approval covering labels for imported gin bearing the word "distilled" as a part of the designation shall be accompanied by a statement prepared by the manufacturer setting forth a step-by-step description of the manufacturing process.

(b) Exemption.

Any bottler of distilled spirits shall be exempt from the requirements in paragraph (a) of this section and §5.56 if the bottler possesses a certificate of exemption from label approval, ATF Form 5100.31, issued by the appropriate ATF officer pursuant to application on that Form showing that the distilled spirits to be bottled are not to be sold, offered for sale, or shipped or delivered for shipment, or otherwise introduced into interstate or foreign commerce.

(c) Miscellaneous.

Photoprints or other reproductions of certificates of label approval, or certificates of exemption are not acceptable as substitutes for an original or duplicate original (issued, on request, by the appropriate ATF officer) of a certificate. The original or duplicate original of such certificates shall, on demand, be exhibited to an authorized officer of the U.S. Government.

(d) Cross reference.

For procedures regarding the issuance, denial, and revocation of certificates of label approval and certificates of exemption from label approval, as well as appeal procedures, see part 13 of this chapter.

[T.D. ATF-66, 45 FR 40550, June 13, 1980, as amended by T.D. ATF-94, 46 FR 55097, Nov. 6, 1981; T.D. ATF-242, 51 FR 39525, Oct. 29, 1986; T.D. ATF-406, 64 FR 2122, Jan. 13, 1999]

§5.56 Certificates of age and origin.

Distilled spirits imported in bulk for bottling in the United States shall not be removed from the plant where bottled unless the bottler possesses certificates of age and

certificates of origin applicable to such spirits which are similar to the certificates required by §5.52 for like distilled spirits imported in bottles.

Subpart H--Advertising of Distilled Spirits

§5.61 Application.

No person engaged in business as a distiller, rectifier, importer, wholesaler, or warehouseman and bottler of distilled spirits, directly or indirectly or through an affiliate, shall publish or disseminate or cause to be published or disseminated by radio or television broadcast, or in any newspaper, periodical, or any publication, by any sign or outdoor advertisement, or any other printed or graphic matter, any advertisement of distilled spirits, if such advertising is in, or is calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with §§5.61 through 5.66 of this part. Provided, that such sections shall not apply to outdoor advertising in place on (effective date of this treasury decision), but shall apply upon replacement, restoration, or renovation of any such advertising; and provided further, that such sections shall not apply to a retailer or the publisher of any newspaper, periodical, or other publication, or radio or television broadcast, unless such retailer or publisher or radio or television broadcaster is engaged in business as a distiller, rectifier, importer, wholesaler, or warehouseman and bottler of distilled spirits, directly or indirectly, or through an affiliate.

[T.D. ATF-180, 49 FR 31673, Aug. 8, 1984]

§5.62 Definition.

As used in §§5.61 through 5.66 of this part, the term "advertisement" includes any written or verbal statement, illustration, or depiction which is in, or calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, whether it appears in a newspaper, magazine, trade booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, or in any written, printed, graphic, or other matter accompanying the bottle, representations made on cases or in any billboard, sign, other outdoor display, public transit card, other periodical literature, publication, or in a radio or television broadcast, or in any other media; except that such term shall not include:

- (a) Any label affixed to any bottle of distilled spirits; or any individual covering, carton, or other container of the bottle which constitute a part of the labeling under §§5.31 through 5.42 of this part.
- (b) Any editorial or other reading material (*i.e.*, news release) in any periodical or publication or newspaper for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any permittee, and which is not written by or at the direction of the permittee.

[T.D. ATF-180, 49 FR 31673, Aug. 8, 1984]

§5.63 Mandatory statements.

- (a) *Responsible advertiser.*

The advertisement shall state the name and address of the permittee responsible for its publication or broadcast. Street number and name may be omitted in the address.

(b) *Class and type.*

The advertisement shall contain a conspicuous statement of the class to which the product belongs and the type thereof corresponding with the statement of class and type which is required to appear on the label of the product.

(c) *Alcohol content.*

(1) *Mandatory statement.* The alcohol content for distilled spirits shall be stated in percent-alcohol-by-volume. Products such as "Rock and Rye" or similar products containing a significant amount of solid material shall state the alcohol content at the time of bottling as follows: "Bottled at _____ percent-alcohol-by-volume."

(2) *Optional statement.* In addition, the advertisement may also state the alcohol content in degrees of proof if this information appears in direct conjunction (i.e. with no intervening material) with the statement expressed in percent-alcohol-by-volume. If both forms of alcohol content are shown, the optional statement in degrees of proof shall be placed in parentheses, in brackets, or otherwise distinguished from the mandatory statement in percent-alcohol-by-volume to emphasize the fact that both expressions of alcohol content mean the same thing.

(d) *Percentage of neutral spirits and name of commodity.*

(1) In the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, there shall be stated the percentage of neutral spirits so used and the name of the commodity from which such neutral spirits have been distilled. The statement of percentage and the name of the commodity shall be made in substantially the following form: " __ % neutral spirits distilled from .

(insert grain, cane products, or fruit, as appropriate)"; or __ % neutral spirits (vodka) distilled from _____ (insert grain, cane product, or fruit, as appropriate)"; or " __ % grain (cane products), (fruit) neutral spirits"; or " __ % grain spirits".

(2) In the case of neutral spirits or of gin produced by a process of continuous distillation, there shall be stated the name of the commodity from which such neutral spirits or gin has been distilled. The statement of the name of the commodity shall be made in substantially the following form: "Distilled from grain", or "Distilled from cane products", or "Distilled from fruit."

(e) *Exception.*

(1) If an advertisement refers to a general distilled spirits line or all of the distilled spirits products of one company, whether by the company name or by the brand name common to all the distilled spirits in the line, the only mandatory information necessary is the name and address of the responsible advertiser. This exception does not apply where only one type of distilled spirits is marketed under the specific brand name advertised.

(2) On consumer specialty items, the only information necessary is the company name or brand name of the product.

[T.D. 7020, 34 FR 20337, Dec. 30, 1969, as amended by T.D. ATF-180, 49 FR 31674, Aug. 8, 1984; T.D. ATF-237, 51 FR 36394, Oct. 10, 1986]

§5.64 Legibility of mandatory information.

- (a) Statements required under §§5.61 through 5.66 of this part to appear in any written, printed, or graphic advertisement shall be in lettering or type size sufficient to be conspicuous and readily legible.
- (b) In the case of signs, billboards, and displays the name and address of the permittee responsible for the advertisement may appear in type size of lettering smaller than the other mandatory information, provided such information can be ascertained upon closer examination of the sign or billboard.
- (c) Mandatory information shall be so stated as to be clearly a part of the advertisement and shall not be separated in any manner from the remainder of the advertisement.
- (d) Mandatory information for two or more products shall not be stated unless clearly separated.
- (e) Mandatory information shall be so stated in both the print and audio-visual media that it will be readily apparent to the persons viewing the advertisement.

[T.D. ATF-180, 49 FR 31674, Aug. 8, 1984]

§5.65 Prohibited practices.

(a) *Restrictions.*

An advertisement of distilled spirits shall not contain:

- (1) Any statement that is false or untrue in any material particular, or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific or technical matter tends to create a misleading impression.
- (2) Any statement that is disparaging of a competitor's product.
- (3) Any statement, design, device, or representation which is obscene or indecent.
- (4) Any statement, design, device, or representation of or relating to analyses, standards or tests, irrespective of falsity, which the appropriate ATF officer finds to be likely to mislead the consumer.
- (5) Any statement, design, device, or representation of or relating to any guarantee, irrespective of falsity, which the appropriate ATF officer finds to be likely to mislead the consumer. Money-back guarantees are not prohibited.
- (6) Any statement that the distilled spirits are distilled, blended, made, bottled, or sold under or in accordance with any municipal, State, Federal, or foreign authorization, law, or regulation, unless such statement appears in the manner authorized by §5.42 for labels of distilled spirits. If a municipal, State or Federal permit number is stated, such permit number shall not be accompanied by any additional statement relating thereto.

(7) The words "bond", "bonded", "bottled in bond", "aged in bond", or phrases containing these or synonymous terms, unless such words or phrases appear, pursuant to §5.42, on labels of the distilled spirits advertised, and are stated in the advertisement in the manner and form in which they are permitted to appear on the label.

(8) The word "pure" unless:

- (i) It refers to a particular ingredient used in the production of the distilled spirits, and is a truthful representation about the ingredient; or
- (ii) It is part of the bona fide name of a permittee or retailer from whom the distilled spirits are bottled; or
- (iii) It is part of the bona fide name of the permittee who bottled the distilled spirits.

(9) The words "double distilled" or "triple distilled" or any similar terms unless it is a truthful statement of fact; except that "double distilled" or "triple distilled" shall not be permitted in advertisements of distilled spirits produced by the redistillation method when a second or third distillation step is a necessary distillation process for the production of the product.

(b) *Statements inconsistent with labeling.*

(1) Advertisements shall not contain any statement concerning a brand or lot of distilled spirits that is inconsistent with any statement on the labeling thereof.

(2) Any label depicted on a bottle in an advertisement shall be a reproduction of an approved label.

(c) *Statement of age.*

The advertisement shall not contain any statement, design, or device directly or by implication concerning age or maturity of any brand or lot of distilled spirits unless a statement of age appears on the label of the advertised product. When any such statement, design, or device concerning age or maturity is contained in any advertisement, it shall include (in direct conjunction therewith and with substantially equal conspicuousness) all parts of the statement, if any, concerning age and percentages required to be made on the label under the provisions of §§5.31 through 5.42. An advertisement for any whisky or brandy (except immature brandies) which is not required to bear a statement of age on the label or an advertisement for any rum or Tequila, which has been aged for not less than 4 years may, however, contain inconspicuous, general representation as to age, maturity or other similar representations even though a specific age statement does not appear on the label of the advertised product and in the advertisement itself.

(d) *Curative and therapeutic claims.*

Advertisements shall not contain any statement, design, representation, pictorial representation, or device representing that the use of distilled spirits has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression.

(e) *Place of origin.*

The advertisement shall not represent that the distilled spirits were manufactured in or imported from a place or country other than that of their actual origin, or were produced or processed by one who was not in fact the actual producer or processor.

(f) *Confusion of brands.*

Two or more different brands or lots of distilled spirits shall not be advertised in one advertisement (or in two or more advertisements in one issue of a periodical or newspaper, or in one piece of other written, printed, or graphic matter) if the advertisement tends to create the impression that representations made as to one brand or lot apply to the other or others, and if as to such latter the representations contravene any provisions of this subpart or are in any respect untrue.

(g) *Flags, seals, coats of arms, crests, and other insignia.*

An advertisement shall not contain any statement, design, device, or pictorial representation which the appropriate ATF officer finds relates to, or is capable of being construed as relating to the armed forces of the United States, or the American flag, or any emblem, seal, insignia, or decoration associated with such flag or armed forces; nor shall any advertisement contain any statement, design, device, or pictorial representation of or concerning any flag, seal, coat of arms, crest, or other insignia, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated.

(h) *Deceptive advertising techniques.*

Subliminal or similar techniques are prohibited. "Subliminal or similar techniques," as used in this part, refers to any device or technique that is used to convey, or attempts to convey, a message to a person by means of images or sounds of a very brief nature that cannot be perceived at a normal level of awareness.

[T.D. 7020, 34 FR 20337, Dec. 30, 1969, as amended by T.D. ATF-180, 49 FR 31674, Aug. 8, 1984; T.D. ATF-425, 65 FR 11891, Mar. 7, 2000]

§5.66 Comparative advertising.

(a) *General.*

Comparative advertising shall not be disparaging of a competitor's product.

(b) *Taste tests.*

(1) Taste test results may be used in advertisements comparing competitors' products unless they are disparaging, deceptive, or likely to mislead the consumer.

(2) The taste test procedure used shall meet scientifically accepted procedures. An example of a scientifically accepted procedure is outlined in the *Manual on Sensory Testing Methods*, ASTM Special Technical Publication 434, published by the American Society for Testing and Materials, 1916 Race Street, Philadelphia,

Pennsylvania 19103, ASTM, 1968, Library of Congress Catalog Card Number 68-15545.

(3) A statement shall appear in the advertisement providing the name and address of the testing administrator.

[T.D. ATF-180, 49 FR 31674, Aug. 8, 1984]